1951.

File No. S.DWR 2/51

Legal **DEPARTMENT**

Examined **A BRANCH**

Subject:— Suits Dharwar

In the Court of the Civil Judge (J.D.)

Civil Suit No. 360 of 1949

Fakiragouda V. Patil Plff-

Vs.

The chief Administrator for Jamkhandi and Sangli Group and others } - Def

For possession of the suit land and for mesne profits

Civil Appeal No 40 of 1951.

S. DWR 2/51

File No.

Std. Scott. Slip 24-B

S. DWR 2/51

In the Munsiff Court, Kundgol.

L.Suit No.32 of 1947.

1) Fakiragouda Venkangouda Patil

Agriculturist, Age 44, Resident of Sirur... Plaintiff

vs.

1. Rao Bahadur Dattatraya Sadashiwa Gokhale, Diwan of Jamkhandi State, Brahmin, Age 60, Resident of Jamkhandi deleted by an application Exh.11 and now represented by)

(1) Meharban Chief Administrator and Collector for merged Deccan States, Dharwar.)

(2) Meharban Chief Administrator, for Jamkhandi and Sangli group at Sangli) Defendants.

The plaintiff informs the Court as under:-

(1) The suit property, No.310 area 8 acres 11 gunthas is situated at Kanadoli.

(2) The suit property originally belonged to one Yashawant Venkatosh Lagu of Kanadoli. The Plaintiff had filed suit No.232 of 1930 against this Lagu and got the attachment before judgment of the said property. In the execution of that decree the suit land was to auction in the Darkhast No219 of 1933 (M.Darkhast No.6 of 1935) and in the auction held on 29.4.1935, plaintiff purchased the property and the sale was confirmed on 29.5.1935,. The plaintiff got the sale-certificate and took possession of the land with crops on 25.12.38. The Plff. has produced the copy of the Kabjapatti.

(3). When the Plff. was enjoying the paid property as its full owner, the said property was attached and was forfeited to the Government, as its original owner after committing an offence under sect.409 of the I.P.Code absconded and did not appear before the Court on the due date. On or about May of 1939 the Mamlatdar and the firs Class Magistrate took possession of the land from its legal owner i.e. the plaff. and the Mamlatdar had no legal authority to do so.

(4) The plaff. having purchased the property in the Court sale, having taken its possession through the Court and having been legally entitled to claim back the possession of the land from the Govt. served the notice under sect.80 of the C.P.Code and its copy is kept herewith.

(5) After the service of the suit notice the deftt. did not hand over the possession of the Land to the plaintiff so he has filed this suit.

(6) As the plaintiff is illegally and improperly dispossessed from his suit land, he is entitled to claim the past mesne profits of 3 years at the xx rate of Rs.100 a year.

(7) The deft. 2 is the tenant for the current yearx and as the land is in his actual possession he is made a party in the suit.

(8) The cause of action for the possession arose on or about May of 1939 xxx and for the mesne profits in the month of March of 1945, 1946 and 1947.

(9) As the suit property is within the jurisdiction of the Court and the cause of action arose here, this Court has jurisdiction to try this suit.

(10) The suit for Court fees is valued seven and half times the land Revenue Rs.38/6/- at Rs.287/13/- and for mesne profits at Rs.300/-. In all it is valued at Rs.587/13/-. For the jurisdiction it is valued at Rs.2000/- avoiding to the market value of the land.

(11) So, the plaintiff prays that the possession of the property i.e. S.No.310 area 8 acres, 11 gunthas Rs.38/6/- of Kandoli be given to him from defts. No.1 and 2 that part mesene profitts of Rs.300/- be give to him from deft. No. 1 and that the future mesne profits and the costs of the suit be given to him and that some other relief that court thinks proper be given to him.

Dt. 17.4.1947

Plaff's. Signature ....

Varification.

Plaff's. signature.

Dharwar Civil Suit No. 360/1949. 3

--

1) This is a suit for possession of the suit land with past and future mesne profits.

2) The plaintiff filed a suit No. 232 of 1930 against one Yashwant Lagu in the Court of Kundgol Jamkhandi State, go the present suit property, S.No. 310, attached before jud ment and obtained a money decree against him. In execution of the decree, the attached property was ~~to~~ put to sale an purchased by the plaintiff on 29-5-35.

3) During the pendency of the suit, No. 232 of 1930, Yashwant Lagu, who was being crimianally prosecuted under S. 409 ~~of the~~ I.P.C for defalcation of the Government money, absconded. The Magistrate issued a proclamation on 12-12-32 and ordered him t appear by 12-2-33. Yashwant Lagu failed to appear and the plaint property was attached by the Magistrate on 17-5-33. The property was ordered to be sold on 2-3-34. Failing a bidder in the sale, it was forfeited to the State Government.

4) On 25-12-38 the plaintiff obtained possession of the suit property through revenue agency, on the strength of the sa certificate of 5-8-35. Subsequently, he was dispossessed b the State Government in July 1939.

5) On 8-1-40 the Plaintiff presented an application to the Mamlatdar, Kundgol for restoration of the suit property but his application was filed.

6) On 21-1-47 the plaintiff gave notice of suit under s. 80 of the Civil Procedure Code to the Diwan Saheb of the State and on 17-4-47 he filed this suit in the Court of the Munciff, Kundgol, Later on, after merger, the suit was transferred to the Civil Judge, Senior Division, Hubli.

7) The order of attachment by the Civil Court and a copy of the decree in Civil suit No. 232 of 1930 are not in the record of the case. In the absence of these papers, it is not possible to take a definite view on the defensibility or otherwise of the suit. If the Civil Court's attachment of the suit property is prior in point of time to the attachment

attachment by the Magistrate, the Government cannd retain the suit property. If otherwise, the suit is defensible (vide Narayan V. Govind, 31 Bom. L.R. 345). It is, therefore submitted that the Collector, Dharwar may be requested to forward the following papers to this office :-

1) a copy of the order of attachment before judgment by the Civil Court, Kundgol, Jamkhandi State in Civil Suit No. 232 of 1930, in respect of Yashwant Lagu's property S. No. 310 of Kamadolli.
2) a copy of the decree in Civil Suit No. 232 of 1930 obtained by the plaintiff against Yashwant Lagu.

12/10

ADR Pl discuss.

RK 12/10

Sheri Inamdar.

Subject:- Supply of certified copy of the Judgement in Civil suit No.232/30 of Kundgol Civil Court.

***

No.L.A.W.W.S.1581. Office of the Collector,
Letter. Dharwar, 2nd Nov. 1950.

To

The Civil Judge Jr.Dn.,
Jamkhandi.

The District Government Pleader, Dharwar after enquiry states that the records of suits of Kundgol court of the year 1930 are in your custody. I therefore request you to forward to this office , at a very early date " a copy of the decree in civil suit No. 232 of 193 filed by plaintiff Shri Fakiragouda against Yashwant lagu in the court of Kundgol, Jamkhandi State", as the same is required to be submitted to Government.

An early reply is requested.

Sd/- S.N.Pattan.
for Collector of Dharwar.

Copy submitted to R.L.A.Bombay with reference to his letter No. 14481 dated 16/10/1950 for information.

2. A copy of the decree in question will be submitted on receipt from the Civil Judge Jr.Dn., Jamkhandi.

N.

for Collector of Dharwar.

2038/0

A-7-11-50.

Await Copy of decree.

7-11.

[illegible]

Read in Court
11-3-31

Sd/xxx
[illegible]

Copy prepared by
[illegible]

compared by
[illegible]

True copy
[illegible]
C.O.C

Dharwar Civil Suit No. 360 of 1949.

This is a suit for possession of suit land with past and future mesne profits.

On merits the suit is not defensible (vide Narayan V. Govind 31 Bom. L.R. 345). However on Technical grounds the suit is defensible.

The defence of the suit may be sanctioned on the lines of the accompanying brief.

Dy
4/12

HSP
4/12

Addl Solicitor (Mad) approved
Dy
6/12

Secy- R.D. 80
7/12

B Govt

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
07 DEC 1950

7/12/50

No. 17843
dt. 7/12/1950

No. 17478 13 85

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 9th Dec. 1950.

Subject:- Dharwar Civil Suit 360/1949

MEMORANDUM.

The ~~District~~ Sub Government Pleader, Hubli, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the written statement~~ is sent herewith in advance.

Papers of the case in file, one received from the Collector accompany.

For Remembrancer of Legal Affairs.

To

The ~~District~~ Sub Government Pleader, Hubli

Subs forsig

kam. 20.4.50.

Dlvd 8/12

Issued on 9/12

A Sole

G.R.L.D. no. 808 dt 18-1-51
Sent to Press.
18/1

Two spare press copies.
17/1

Suits :

Dharwar.

For possession of the suit land and for mesne profits.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 808.

Bombay Castle, 12th January 1951.

Letter from the Collector of Dharwar No. L.A.W. 1581, dated 10th August 1950.—Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION).

Civil Suit No. 360 of 1949.

Fakiragouda V. Patil ... ... Plaintiff;

versus

The Chief Administrator for Jamkhandi and Sangli Group and others ... ... Defendants.

Memorandum to the District Government Pleader, Hubli, No. 17478, dated 9th December 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

K Leg H 181—1

[*P.T.O.*

To

* The Revenue Department,
* The Collector of Dharwar,
The District Government Pleader, Hubli (with two copies of the brief).

* With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

DHARWAR CIVIL SUIT No. 360 OF 1949.

Chronological Statement of Facts.

1. This is a suit for possession of the suit land with past and future mesne profits.

2. The plaintiff filed a suit No. 232 of 1930, against one Yashwant Lagu in the Court of Kundgol Jamkhindi State, got the present suit property, Survey No. 310, attached before judgment and obtained a money decree against him. In execution of the decree, the attached property was put to sale. The plaintiff himself purchased the property in Court sale on 29th April 1935. The sale was confirmed on 29th May 1935. On 25th December 1938 the plaintiff got possession of the suit property on the strength of the sale certificate of 5th August 1935.

P. 21 of the D. File.

P. 45 of the File.

P. 47 ,,

3. During the pendency of the suit No. 232 of 1930 Yashwant Lagu, who was being criminally prosecuted for defalcation of Government money, absconded. The Magistrate issued a proclamation on 12th December 1932 and ordered him to appear by 13th February 1933. Yashwant Lagu failed to appear and the plaint property was attached by the Magistrate on 17th May 1933. The property was ordered to be sold on 2nd March 1934. Failing a bidder in the sale, it was forfeited to the State Government.

P. 225 ,,

P. 239 ,,

P. 253 ,,

P. 279 ,,

4. In July 1939 the plaintiff was dispossessed by the State Government.

5. On 8th January 1940 the plaintiff presented an application to the Mamlatdar, Kundgol for restoration of the suit property but his application was filed.

6. The suit property was subject to two prior encumbrances of Rs. 400 and Rs. 1,600 and the land was sold subject to these two prior charges for Rs. 10 to the plaintiff.

P. 42 of the File.

7. On 27th January 1947 the plaintiff gave notice of suit to the Diwan of Jamkhindi under Section 80 of the Civil Procedure Code and 17th April 1947 he filed this suit in the Court of Munsiff, Kundgol. Later on, after merger the suit was transferred to the Civil Judge, Senior Division, Hubli.

Grounds of Defence.

1. The District Government Pleader should verify whether the suit property was really attached before judgment in the Kundgol Munsiff Court in Civil Suit No. 232 of 1930 and whether this

attachment continued up to the date of the decree, therein.

2. *Suit not maintainable.*—The suit is filed against the Chief Administrator and Collector, Dharwar, and Chief Administrator for Jamkhindi States. No suit will lie against public officers by their official names. Consequently the present suit is not maintainable.

3. Assuming that the plaintiff had a cause of action for this suit against the State of Jamkhindi, the successor Government after merger or any of their officers cannot be sued for the illegal acts, if any, committed by the former State. It is an established principle that upon a cession of territory an inhabitant of a ceded territory can make good in the municipal Courts established by the new Sovereign only such rights as that new Sovereign has recognised and not the rights enjoyed under the rule of predecessors (vide Vajesinji *v.* Secretary of State 26 Bom. L. R. 1143) Sayad Ahmed *v.* Darga Committee of Ajmer 49 Bom. L.R. 235). The plaintiffs, therefore, have no right to bring this action against the successor of the Jamkhindi State or any of their officers. In the agreement of Merger between the Jamkhindi State and the Government of Bombay, the State's liability for such acts has not been undertaken by this Government.

For these reasons it should be contended that the suit fails and should be dismissed with costs.

Copy of Sub-Government Pleader, Hubli's letter No.111 of 1951 dated 29.9.51 to the Remembrancer of Legal Affairs, Bombay.

.....

Subject:- Report to file an appeal in L.C. 360/49 of the Hubli court.

I am submitting herewith my report for filing an appeal against the judgement and decree of the lower court along with a copy of the judgment of the case. If approved, the District Government Pleader may please be asked to file an appeal in the case.

.....

LEGAL DEPARTMENT
File No. 21775
No. E/19-10-51

No. M.R.C.S.R. 540.
DHARWAR 15-10-51

Copy with the accompaniments forwarded with compliments to the Remembrancer of Legal Affairs Bombay.

2. If the arguments advanced by the Sub-Government Pleader Hubli in favour of filing an appeal are tenable, Government may kindly be moved to authorise the D.C.P. Dharwar to file an appeal.

D.C. signed by Collector for Collector of Dharwar

L.D. 18 OCT 1951

L.D.

1) Please see the above report from the Collector Dharwar & the accompanying report from Sub Govt. Pleader Hubli.

2) Dharwar Suit No 360/49 was decided against Govt on 20-9-51. Facts giving rise to the Suit are at page 9 of the yellow file below.

Under this copy of the judgment in the case & the Sub Govt. Pleader's report

3) Subsequent Pleader reports that the case is worth going in appeal on technical grounds.

4) In preparing the brief for revision, it was pointed out also that the case was not defensible on merits, though it was defensible on technical grounds.

5) On the facts of the case, the ruling in 31 Bom. L.R. 345 will apply & the plff has a good case. But on technical grounds the case is worth going in appeal.

(1) The suit against a public officer i.e., the Chief Commissioner, by his official name & on the strength of the ruling in "Sheriff of Bombay V. Hukumji" 9 L.R. 31 Bom 749, the plff may succeed.

(2) Secondly, the order of forfeiture & taking possession of the suit property are the acts of the State of Gwalior. Plff cannot against the present defts successor-in-office may enforce his remedy in the Municipal Court established by the Govt. (vide 49 Bom. L.R. 235. Rulings. 26 Bom. L.R. 1143.

(3) On other points suggested by the Junior Pleader, the case is doubtful.

Solicitor (Mil) official may be filed in view of the opinion of the O.S.P.

Addl. Secy 23/10

L.C. suit No. 360/49.

In the Court of the Civil Judge, Senior Division,

At Hubli.

Plaintiff :- Fakeergouda Venkangouda

vs.

Defendants :- Meharban Rao Bahadur D.S. Gokhale, Divansaheb Jamkhandi.

In this the report of the Sub Government pleader is as under :-

The suit has been decreed in favour of the plff against Government. On merits it can be said that the plff was illegally dispossessed of the suit property as the property was attached before judgment by an order of the Civil Court and was subsequantly sold in due course of law, before it was forfeited to the State Government.

On technical grounds the suit does not survive in my opinion. The notice under S. 80 C.P.C. is not given to the present Goverhment nor of the amendment of the plaint of adding the Collector of Dharwar as Defendant No. 1A

The suit is also barred by limitation as the suit has not been filed within one year from the date of dispossession in 1939. The learbed Civil Judge, Senior Division has not said anything in the judgment about the limitation point even though he has answered the issue in the affirmative.

Issue No. 3 has been wrongly answered by this Court. The reasoning given in the judgment is not full and satisfactory. Even though it was legal to bring the suit against the Diwan of Jamkhandi State before merger, after the merger the State Government and not the Collector ought to have been made a party.

Issues Nos. 4 & to 6 also have been wrongly answered The act of merger is an Act of State and whatever rights or

liabilities that existed before the merger cannot be agitated in the ~~Moffusal~~ municipal Courts. They must have been recognised by the new Sovereign either by an agreement or by statute. Nothing has been done in this case. So the Civil Court cannot ~~xxx~~ sit upon judgment upon an Act of State. The ruling quoted in support of this argument have not been discussed by this Court. It simply says that the rulings are not applicable to the present case. If the rulings are held to be in consonance with the facts of the present case, then the plff's suit will have to be dismissed.

On merits the plff has got a good case; but on law points discussed above the suit does not seem to survive. Technically the suit cannot stand. If the law points discussed above are appreciated in favour of the Defendant - Government, then an appeal should be filed against the judgment and decree of the lower Court.

Sub Government pleader,
Hubli

Received on :- 13-9-1949.

Registered on :- 4-10-1949.

Decided on :- 20-9-1951.

Duration :- One year, 11 months and 16 days.

IN THE COURT OF THE CIVIL JUDGE,SENIOR DIVISION,

AT HUBLI. Ex. 61.

Pleaders. L.C. Civil Suit No. 360 of 1949.

Shri.N.G.Desai. Fakirgouda Venkangouda Patil, Lingayat, agriculturist, 44, residence Sirur..... Plaintiff.

Against.

1. Meharban Rao-Bhadur Dattatraya Sadashiva Gokhale Divansaheb, Brahmin, service, 60 of Jamkhandi in Jamkhandi Province amended as per Ex. 11 as follows :-

Shri B.R.Mathad. 1. Meharban Chief Administrator and Collector, State Division, Dharwar, Dist. Dharwar.

1A. Meharban Chief Administrator of Jamkhandi and Sangli, Sangli.

Absent. 2. Haidarsab wd. Hajaratsab Hulgur, Mahomedan, agriculturist, age about 50 of Kamdolli.

Claim Rs

The Plff sues to recover possession of the suit property from defts 1 and 2 and to get Rs 300/- as past mesne profits for 1944-45 to 1946-47 from deft No. 1 at Rs 100/- per year and to get costs and future mesne profits.

He states that R.S.No. 310 measuring 8 acres 11 guntha assessed at Rs 58-6-0 originally belonged to one Yeshwant

Venkatesha Lagu of Kamadolli and the plff filed Civil Suit No. 232 of 1930 against him in the Civil Court at Kundgol and he got attached the suit land before judgment and ultimately there was a decree in execution of which he filed Darkhast and the land was put to sale on 29-4-1935 and the plff became the purchaser of the property and he obtained a sale certificate and obtained possession on 25-12-1938 and he has produced a copy of the receipt of possession. He states that therefore he has become the absolute owner of the property and that there was a criminal case against Lagu under Sec. 409 of the Indian Penal Code and he absconded and he did not appear before the Magistrate within the time fixed and therefore the State of Ex Jamkhandi attached the property and therefore the Mamlatdar and First Class Magistrate, Kundgol dispossessed the plff in May 1939 and he had no right to dispossess the plff who had a valid ~~xxxx~~ title and whose possession was legal. He states that he gave a notice to deft No.1 under Sec. 80 of the C.P.C. through a pleader as required by law and he has produced a copy of the same in this suit, and as deft No. 1 did not put the plff in possession of the land he has filed the suit to get possession of the land and to get Rs 300/- for past mesne profits, and deft No. 2 is added as he was the tenant of deft No.1.

Deft No. 1 states at Ex. 43 that the notice given under Sec. 80 C.P.C. is not legal and valid and the suit is barred by limitation and the suit filed against Government Officers in their official names is not maintainable and no cause of action has arisen against the Administrator and Collector of Dharwar nor against the State of Bombay. He states that the present Government cannot be sued for the illegal acts if any, committed by the former States and the State's liability for such acts has not been undertaken by the present Government, which can make good such rights only as it has recognised and not such as enjoyed under the Rule of Predecessors. He states that he does not admit that the suit property was attached before judgment and was sold to the plff in due course of law. He states that the suit property was forfeited to the State Government and hence the plff was dispossessed properly and not illegally and improperly. He states

that the claim for possession and mesne profits is not at all tenable in law and the deft is not at all liable to pay mesne profits and therefore the suit be dismissed with costs .

Deft No. 2 was duly served, he was absent. The suit was proceeded with exparte against him. The issues for decision are raised as follows :-

1. Is notice under Sec. 80 valid and legal ?
2. Is the suit in time ?
3. Is the suit against defts in their individual capacity tenable ?
4. Is there a cause of action for the suit ?
5. Is the present Government liable for the acts of former State ?
6. Was plff legally dispossessed by Government ?
7. Is plff the owner of the suit property ?
8. Is plff entitled to possession ?
9. What is due to plff for past mesne profits ?
10. What order ?

Answers :- 1. Yes. 2. Yes. 3. As given below.
4. Yes. 5. As given below. 6. Yes.
7. Yes. 8. Yes. 9. Rs 300/-. 10. As given below.

Reasons.

The case of the plff is that the suit land belonged originally to one Lagu and that he filed a suit against him for the amount due to him and he got the suit land attached before judgment and that there was a decree in execution of which the suit land was put to sale and was purchased by the plff and a sale certificate was issued to him and he got possession of the property and that Lagu had committed an offence under the Indian ~~Penal~~ Penal Code and he did not present himself before the Magistrate in time and therefore the Jamkhandi State attached the property and ultimately dispossessed the plff and that the Jamkhandi State had no right to do so and therefore he gave a notice under Sec. 80 of the C.P.C. and he has filed the suit to get possession of t and to get Rs 500/- as mesne profits for three year

The deft says that the suit is not in time , that the notice given was not proper and there was merger of the Jamkhandi State, the Bombay State is not liable for the illegal acts done by the Jamkhandi State, and that therefore the suit is not tenable and that the Bombay State is not liable and therefore the suit be dismissed with costs.

Issue No. 1 :- The suit was filed by plff in the Jamkhandi State Court at Kundgol on 17-4-1947 and there it was numbered as Civil Suit No. 32 of 1947. After merger the suit was transferred to this Court and it is numbered as L.C. suit No. 360 of 1949. The plff states the name of deft as Rao Bahadur Dattatraya Sadashiv Gokhale Divan Saheb, State Jamkhandi, residing at Jamkhandi. After merger, there was an amendment in the plaint and deft 1 was described as Chief Administrator and Collector, States Department, Dharwar, District Dharwar and deft No.1A was mentioned as Chief Administrator, Sangli Gat including Jamkhandi at Sangli. It is stated for plff that by Jamkhandi Gazette of the year 1941 page 428 Sec. 80 of the C.P.C. was amended by the State od Jamkhandi should be filed for and against the Divan of Jamkhandi. A copy of the notice given by the plff is at Ex. 49 and this was before the merger of the Jamkhandi State. The notice is dated 27-7-1947. Therefore it is seen that the notice Ex. 49 as given was perfectly legal according to the law of the Jamkhandi State before merger. Therefore The Divan was the person against whom the suit was to be filed and the plff has done so. The second objection raised for deft 1 that after merger and after adding the Collector, District Dharwar as a party fresh notice under Sec. 80 of the Civil Procedure Code was necessary. When the suit was to be filed against the Divan of Jamkhandi, a notice to him was properly given and the suit was filed against a propur person. After merger the person who stepped into the shoes of the Divan was added as a part and therefore it is seen that no fresh notice is necessary. I, therefore, find issue No. 1 in the affirmative.

Issue No. 3 :- It is stated for deft 1 that the name of the Divan was stated in the plaint and therefore the suit is not properly filed. The plaint shows the name Dattatraya Sadashiv

Gokhale and he is described as the Divan of Jamkhandi State. The words "Divan Jamkhandi State" were sufficient according to law and if more words are added they are redundant and unnecessary and from that it cannot be said that the suit is not properly filed. Therefore I find the issue in the affirmative.

Issue No. 7 :- The plff has stated that he was to ~~get money from one Yeshwant Venkatesha Lagu who~~ was the original owner of the suit property and he filed Civil Suit No. 232 of 1930 against him in the Court at Kundgol and that the suit property was attached before judgment and ultimately there was a decree in execution of which the suit property was sold on 29-4-1935 and the plff purchased the same and he got a sale certificate and he got possession on 25-12-1938 and that K Lagu had committed an offence under Sec. 409 of the I.P.C. and suit land was attached by the State of Jamkhandi as he absconded and that the plff was dispossessed in May 1939. Ex. 50 and Ex. 51 are extracts from the R of Rts and they show that the land belonged originally to Lagu. The State Government attached the property on 26-1-1933 and this was mentioned at entry No. 702 on 18-5-1933. On 26-4-1940 the Jamkhandi State forfeited the land to Government. The plff got a sale certificate Ex. 52 and he obtained possession on 25-12-38, Ex.53. The plff has produced a copy of the application for attachment before judgment with the orders passed thereon and it is seen that the order for attachment was passed on 15-12-1930 and the attachment was confirmed on 11-3-1931. These facts show that the plff got attached the property in the year 1930-31 and he got a sale certificate and obtained possession of the property and that the State Government of Jamkhandi attached the property in 1933. The pleader for plff relies on the ruling Narayan vs. Govind, 31 B.L.R. 345 and 40 Bombay L.R. 422 (Secretary of State vs. Ahalyabai). In the first case it was held that the attachment by the Civil Court having been prior in point of time prevailed over the attachment by the Magistrate. Therefore I find the issue in the affirmative.

Issues 4 to 6 :- It is stated for deft No. 1 that the present Government is not liable for the illegal acts of the Jamkhandi State and that there is no ceuse of action for the present suit and that the plff was dispossessed legally and properly. It is seen that there was an attachment obtained by plff long before the State of Jamkhandi attached the property and therefore the plff who was ultimately the purchaser was the owner of the property and that he was dispossessed in May 1939. The pleader for deft No. 1 relies on Vajesingji vs. The Secretary of State, 26 Bombay Law Reporter, 1143 and 49 Bombay Law Reporter 235 (Sayed vs. Durga Committee) and it is stated that after merger an inhabitant of the ceded territory can only make good such rights as the new Sovereign recognised and not the rights enjoyed under the rule of his predecessors. These rulings do not apply to the facts of the present case. I, therefore, find that the Plff has got a priority of title and he has got a cause of action for the suit. The present Government is liable for the suit claim and that the plff was illegally dispossessed.

Issue No. 8 :- In view of the findings on the above issues I find the issue on the affirmative.

Issue No. 9 :- The Plff has claimed Rs 300/- for past mesne profits for three years before suit. This is not denied for defts. Therefore I find that the plff is entitled to get Rs 300/- for past mesne profits-.

Order.

The plff do recover possession of the suit property from the defts. He shall recover Rs 300/- for past mesne profits from deft No. 1. He shall get costs of the suit from the defts. An enquiry regarding mesne profits from date of suit till possession is obtained is ordered under O. 20 R. 12 Cl. c of the Civil Procedure Code. The defts shall bear their own costs.

20-9-1951. Sd. B.A.Chougle.
Civil Judge, Senior Division.

29

Suits
Dharwar.
For possession of the suit land and for mesne profits.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 16872

Bombay Castle, 23rd October 1951.

Read Government Resolution, Legal Department, No. 808, dated the 12th January 1951.

Letter from the Subordinate Government Pleader, Hubli, No.111, dated the 29th September 1951 addressed to the Collector of Dharwar forwarding a copy of judgment and stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Hubli, on the 20th September 1951, when the following order was passed:-

In the Court of the Civil Judge (Senior Division I at Hubli.
Civil Suit No. 360 of 1949
Fakiragouda Venkangouda Patil - Plaintiff
Vs.
The Chief administrator for) Jamkhindi & Sangli group) - -Defendants

"The plaintiff do recover possession of the suit property from the defendants. He shall recover Rs. 300/- for past mesne profits from defendant No. 1. He shall get costs of the suit from the defendants. An inquiry regarding mesne profits from the date of the suit till possession is obtained is ordered under Order 20 Rule 12 clause c of the Civil Procedure Code. The defendant shall bear their own costs."

Endorsement from the Collector of Dharwar No.M.R.C.S.R.540, dated the 15th October 1951 stating that appeal may be filed in the suit noted in the margin.

RESOLUTION:- Sanction is accorded to the institution of an appeal in the Court of the District Judge, Ahmedabad, against the decision of the Civil Judge (Senior Division), Hubli dated the 20th September 1951 on the lines of the brief accompanying Government Resolution, Legal Department, No. 808, dated the 12th January 1951.

By order of the Governor of Bombay,

Suits for orig. Court & other copies returned.
23/10.

Original

R. T. Katarki,
Deputy Secretary to Government.

D.S.

To

The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar,
The Subordinate Government Pleader, Hubli.

Issued 23/10

BC. 23.10.51.

31 63

Received on

Registered on

Decided on

Duration

In the District Court of Dharwar.

At Dharwar.

Civil Appeal No.372 of 1951 from Decree in Civil Suit No.360 of 1949 of the Court of the Civil Judge, Senior Division of Hubli (Shri. B.A.Chaugule).

Pleaders :-

Shri.B.A.Mahishi, A.G.P., Dharwar.

The State of Bombay represented by the Chief Administrator and Collector of Dharwar, District Dharwar. --- Appellant. (Or. deft 1)

against.

Shri.N.G.Desai, for No.1

1. Fakirgouda Venkangouda Patil, of Shirur, Mahal Kundgol.

No.2 absent.

2. Haidersab Hazaratsab Hulgur, of Kardoli, Mahal Kundgol. --- Respondents (Or. Plff and deft.2 respectively.

Claim Rs. 587-13-0 for Court fees and Rs.2000/- for jurisdictid

Judgment

This is an appeal by the State of Bombay represented by the Chief Administrator and Collector of Dharwar District.

2. The facts giving rise to this appeal may be briefly stated as follows :-

3. Respondent No.1 filed a suit for possession

65

and not by the name.

(2) After the integration of Jamkhandi with the State of Bombay, the State of Bombay should have been made as a party.

(3) " Rights of persons in merged states cannot be enforced in Municipal Courts in India unless they are recognised by the new sovereign authority."

9. I rejected all these contentions for the following reasons :-

10. The lower Court thought that the addition of the name of the Divan was only redundant and that the suit was in fact against the Divan of the Jamkhandi State. This contention does not really arise because after the plaint was amended and the Chief Administrator and Collector of Dharwar was substituted the suit is against the Collector of Dharwar and the name of the Collector is not shown in the plaint. The plaint is therefore against the officer viz., The Collector and is not against the Collector by name. There is therefore no point in this contention.

11. The second contention of the learned pleader for the appellant is that after the integration the State of Bombay should have been made as a party. The State of Bombay is represented by the Collector of Dharwar and in the appeal memo also the State of Bombay is shown as having been represented by the Collector of Dharwar. Technically the plaint might have been amended so as to show that it was against the State of Bombay represented by the Collector of Dharwar.

that section 79 C.P.C. provides that in any suit against the State of Bombay, the State of Bombay should be shown as a party. But the learned pleader for the appellant is not able to show any authority as to the law applicable to suits already filed before the merger. In any case I hold that this is a technical objection and should not be raised when in fact the Collector of Dharwar is already on the record as defendant No.1.

12. The third contention of the learned Pleader for the appellant is that unless rights are recognised by the succeeding sovereign authority the rights cannot be enforced in civil courts in India, On this point the learned pleader for the State of Bombay is not able to show that the rights of the present plaintiff have not been recognised by the new sovereign authority viz., the State of Bombay. Whether these rights have been recognised or not would depend on the document of integration or merger. The learned pleader for the State of Bombay says that he has not got any document of merger or integration and that he is not able to show that the plaintiff's rights have not been recognised by the new sovereign authority. As this contention is raised by the learned pleader for the State of Bombay, it is for him to show that the plaintiff's rights have not been recognised by the State of Bombay. I am quite sure that all such rights as the present one would not be repudiated by the State of Bombay because of the merger. In any case the burden is on the appellant viz., the State of Bombay to show that these rights have not been recognised by the State of Bombay. The burden is also on the State of Bombay because the matter is within its own special

Bombay

14. No other point is urged.

15. I therefore dismiss the appeal with costs.

12th August '52. Sd/- V.B.Raju,
District Judge.

2/57

No.749 dated 22 Aug '52,
Office of the DisT Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay.

Subject :- Civil Appeal No.372 of 1951 in L.C.Suit No.360 of 1949 - Hubli (Dharwa

State v. Fakirgouda Venkangouda.

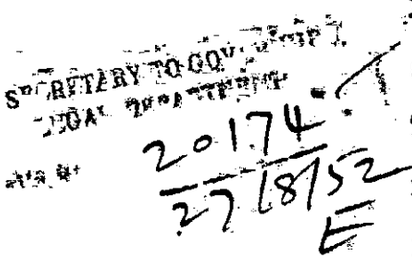
G.R.L.D.No.16872 dated 23-10-51.

Sir,

In continuation of this office No.716 dated 19-8-1952, I have the honour to state as follows :-

The suit was brought originally in Kundgol Court by respondent No.1 against one Yeshwant Lagu for the recovery of money due from the said Lagu to respondent No.1. After the filing of the suit the respondent No.1 got attached before judgment in 1951 survey No.310 measuring 8 acres & odd of Kamdolli in the Kundgol Taluka of the former Jamkhandi State Subsequently he obtained a money decree and in execution of that decree himself purchased the said land on 29-3-1935, and obtained possession of the same in 1938.

Yeshwant Lagu was charged under section 409 of the Indian Penal Code for having embezzled Government monies and a warrant was issued for his arrest. Yeshwant Lagu absconded and his property viz., the above mentioned survey number was attached by the First Class Magistrate, Kundgol, ~~in 1939~~ under section 88 of the Criminal Prodedure Code, in 1933. The possession of the property was also taken from respondent No.1 by the F.C.Magistrate, Kundgol, in 1939. Then the present suit was instituted by the respondent No.1 against Government for recovery of the land together with costs and mesne profits. The suit was decreed by the trial Court and was taker in appeal in the above number.



It is well settled by the rulings of the

Bombay High Court quoted in the trial Court judgment that an earlier Civil attachment prevails over an attachment made under section 88 of the ~~Civil~~ Criminal Procedure Code. In the appeal Court the case was argued mainly on grounds of law which are mentioned in the judgment. And the reasons that are given by the appellate ~~Court~~ Judge for not accepting any of the arguments addressed to him in appeal are apparent from the judgment.

I think that the grounds which are available to Government are very technical grounds such as may not appeal to the High Court. Hence I do not think that any useful purpose will be served by taking the matter higher up.

An uncertified copy of the judgment of the appellate Court is sent herewith.

Yours faithfully,

B. L. Maheshi for

Dist Govt Pleader.

2/57

39

L. D.
9 SEP 1952

Subject:- Civil appeal No.372 of 1951 in
L.C. suit No.360 of 1949 - Hubli.

No.M.R.G.S.R. 540
Dharwar, 30-8-52.

Letter
To

The Remembrancer of Legal Affairs,
Bombay.

Ref:- D.G.P. Dharwar's letter No.749 dated 22-8-52, addressed to you and a copy endorsed to this office for information.

Sir,

I invite your attention to the D.G.P's letter quoted above, and request you please to intimate whether Government intends to file an ~~xxxxxxxxx~~ appeal to the High Court against the decision of the District Judge Dharwar in Civil appeal No.372 of 1951, and whether the papers of the case should be submitted to Government for filing the appeal.

for Collector of Dharwar.

File No 2/226
Suit No — 10/1952
E

12-11-52.

L.D.

Submitted. Pl. see the report of the D.G.P at pp. 9-10 ante.

The D.G.P. has stated that the District Judge, Dhanbad has dismissed the appeal filed by the State of Bombay. The D.G.P is of opinion that the grounds which are available to Government are very technical grounds such as may not appeal to the High Court. He is therefore of opinion that no useful purpose will be served by taking the matter to the High Court. The last date for filing a second appeal is 12.th November 1952 + excluding days. For orders.

NB
11.9.52 Sol(M)

Sol.(Mof.).

The dispute in this case relates to S.No.310 of the village Kanadoli, Taluka Kundgol, formerly included in the Jamkhandi State. This land formerly belonged to one Yeshwant Lagu. He owed money to one Fakiragouda Patil. The said Fakiragouda Patil filed suit No.232 of 1930 for recovering the debt due to him, and inthe course of the suit he got the above land attached before judgment. The order of attachment before judgment was passed on 15-12-1930. Fakiragouda ultimately got a decree and the attachment was confirmed on 11-3-1931. Then there were execution proceedings and Fakiragouda purchased the property in the court auction on 29-4-35. He was put in possession on 25-12-1938. Since then he had been in possession.

2. It seems that Yeshwant Lagu was involved in some criminal offence and he had absconded. His property consisting of the above land was therefore attached on 26-1-1933 and the same was forfeited to the Jamkhandi State in May 1939. The Jamkhandi State dispossessed Fakiragouda and assumed possession in May 1939. The order of forfeiture was confirmed by the Jamkhandi State on 26-4-40 and since then the Jamkhandi State had been in possession.

3. The plff. filed the present suit in 1947 in the Jamkhandi Court for possession alleging that he had a better title to the land under the court auction sale held in 1935 and that the attachment and forfeiture effected by the criminal court after attachment of the civil court could not be allowed to prevail.

4. This suit was pending at the date of the merger of Jamkhandi State into Bombay State in 1948. The suit was ultimately transferred to the court of the Civil Judge, S.D.,Hubli and it was heard by him. The Govt. contended that the order of forfeiture passed by the Jamkhandi State was legal and that the criminal attachment had been affected in 1933 before the auction sale was held by the civil court in 1935. It was also urged that in any case the State of Bombay as a successor Govt. was not liable for any unlawful orders which might have been passed by the Jamkhandi State.

5. The learned Judge held that the attachment of the civil court was made in 1931 and the court auction sale was held in 1935. The criminal attachment was made in 1933 but the criminal attachment must be deemed to be subject to the prior attachment of the civil court. The auction sale held by the civil court on the basis of the prior civil attachment must prevail over the forfeiture order passed by the criminal court on the basis of attachment of a later date. The learned Judge relied on the decisions of the Bombay High Court in Narayan vs. Govind 31 B.L.R. p.345 and Secretary of State vs. Ahlyabai 40 B.L.R.,p.422. The learned Judge passed a decree for possession and mesne profits in favour of the plff.

6. The Govt. of Bombay decided to file an appeal against that decision. That appeal was heard by the Dist. Judge, Dharwar, and he dismissed the same on 12-8-1952. The question now is whether a second appeal may be filed in the High Court against that decision.

7. It seems to be indisputable that the civil court attachment, which was effected in 1931, must prevail over the criminal court attachment effected in 1933. The Court auction sale held in 1935 on the basis of the

civil court attachment gave a better title to the plff. The Jamkhandi State claimed possession under an order of forfeiture passed on the basis of an attachment made under sec.409 of the Cr.P.C. at a later date i.e. in 1933. But such attachment followed by forfeiture would not give a better title to the Jamkhandi State. This view of the law is supported by the two decisions referred to above, and the same appears to be correct.

8. The only defences available to the State of Bombay were technical defences. The main technical defence was that the State of Bombay would not be liable for any wrongful acts of the Jamkhandi State and that after merger the Bombay State took over the Jamkhandi State as it was at that time. But this contention loses some of its strength under the peculiar xxxxxxxxxxxxxxx facts of this case. In the first place the plff. had started his suit for possession before the date of the merger, and that suit was pending at the date of the merger. The suit was continued after bringing the State of Bombay on record. The State of Bombay has retained possession of the land which had been acquired by the Jamkhandi State under a questionable order of forfeiture. In these circumstances the State of Bombay would not morally have a strong case for going to the High Court in second appeal. The matter is also not of much importance as it relates to a small piece of land.

9. In these circumstances the State of Bombay may acquiesce in the decision of the appellate court.

REVENUE DEPARTMENT, SECRETARIAT, BOMBAY.
04 NOV 1952

18299/E
4-11-52

R.L.A 3/11

Sey R.D. 5/11

Suits.
Dharwar.

For possession of the suit land and
for mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department,
Corrigendum No. 13081.
Bombay Castle, 7th August 1952.

In Government Resolution, Legal Department No.16872 dated the 23rd October 1951, in line 2 of the Resolution, read "District Judge,Dharwar" in place of "District Judge, Ahmedabad".

By order of the Governor of Bombay,

R.T.Katarki

R.T.KATARKI,
Deputy Secretary to Government.

Suits pending
DCG
21/8

D.S. (Civil)

To
The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar,
The Subordinate Government Pleader, Hubli.

Answer
27/8.

Suits after issue
This may be filed in SDWR 2/51

DCG
8/8

Solicitor (Civil) Exe
8/8

Suits.
Dharwar.
For possession of the suit land and for mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 20953/E
Bombay Castle, 12 December 1952.

Read Government Resolution, Legal Department No.16872, dated the 23rd October 1951.

Letter from the District Government Pleader, Dharwar No. 716, dated the 19th August 1952, stating that the Civil Appeal No.46 of 1951 in the suit noted in the margin was decided by the District Judge, Dharwar, on the 12th August 1952, when the following order was passed :-

In the Court of the Civil Judge (Senior Division) at Hubli.	:
Civil Suit No.360 of 1949.	:
Fakiragouda Venkangouda Patil.. Plaintiff.	:
Vs.	:
The Chief Administrator for Jamkhindi & Sangli group. .. Defendants.	:

"I therefore dismiss the appeal with costs."

Letter from the District Government Pleader, Dharwar, No.749, dated the 22nd August 1952, forwarding uncertified copies of the judgment and decree.

RESOLUTION :- The result of the Civil Appeal No.46 of 1951 is recorded.

By order of the Governor of Bombay,

original R T Katarki

R.T. Katarki,
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar.
The Subordinate Government Pleader, Hubli

K.1/-

Submitted for Signature
Sha
8/12

Issued
17/12

DS(Civil)

Submitted after issue
File in S. DWR 2/51
Thru
13/12
Supdt KB
13/12/52

S DWR 2/51
15/12

No. 1091 dated 24 Dec '52.
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay.

Subject :- L.C.Suit No.360 of 1949 - Hubli and
Civil Appeal No.372 of 1951 - Dharwar.

Sir,

In acknowledging the receipt of a copy of G.R.L.D.No.20953/E dated 12th Dec '52, I have the honour to point out that the number of appeal 46 of 1951 quoted in the resolution is incorrect. The correct number is Civil Appeal 372 of 1951.

Necessary corrections may please be made.

Yours faithfully,

Dist. Govt. Pleader.

51

Suits:
Dharwar
For possession of the suit land
and for Mesne profits.

51

GOVERNMENT OF BOMBAY,
Legal Department,
Corrigendum No. 2971E
Bombay Castle, 6th January 1953.

In Government Resolution, Legal Department No. 20953/E dated the 12th December 1952, in para 2 of the Resolution, read 'Civil Appeal No. 372 of 1951' for 'Civil Appeal No. 46 of 1951'.

By order and in the name of the Governor of Bombay,

Original R T Katarki

R. T. Katarki,
Deputy Secretary to Government.

To

The Revenue Department,

The Collector of Dharwar,

The District Government Pleader, with reference to his letter No. 1091 dated the 24th December 1952.

The Subordinate Government Pleader, Hubli.

BM.
5.1.

Submitted for signature
Shw
5/1
D. Sec (Civil)

Issued
6/1.

Submitted after issue
File w.s. DWR 2/57

7/1

Supdt-NB
7/1/53

No. 10891/E 55

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 14-5-1956

Subject:- Civil Suit No. 360 of 1949

Memorandum:

With reference to his endorsement No. 1 MRGSR-540 dated the 31st March 1956, the District Government Pleader, Dharwar is requested to forward uncertified copies of the judgment and decree to this office immediately and to state what is the last date for filing an appeal.

for Remembrancer of Legal Affairs.

To
The District Government Pleader, Dharwar

Copy forwarded with compliments to the Collector of Dharwar with a request to forward his report under Rule 132 of the Law Officers Rules to this office, immediately. This is with ref. to his endorsement no. MRGSR-540 of 31.3.56

Dsw 0so. 1415

2/57

53

Copy of letter No. nil dated 22-2-1956 of the Sub-Government Pleader, Hubli addressed to the Remembrancer of Legal Affairs, Bombay and sent through Collector.

---x---

Subject:- Final Decree Proceedings in L.C.'s No. 360/1949 of Hubli Court.
...

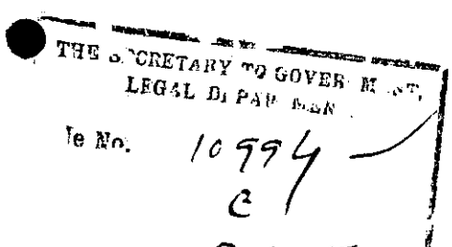
Reference:- Collector's No. MRGSR-540 of 6-2-1956..
...

Sir,

I have to submit that the court has ordered the Government to pay Rs.1500/- with costs to the plaintiff as mesne profits of six years i.e. from 1947-48 to 1952-53.

The plaintiff Fakeergouda Venkangouda Patil of Sirur in Kundgol Mahal had claimed Rs. 2350/- as mesne profits of the suit land Rs.No. 310 A--G 8-10 Rs.As.Ps. 38-6-0 of Kamadolli village.

The court has decided case on 20-2-1956. I shall apply for the copy of the order and send the same as soon as it is obtained.



No. MRGSR-540.
Office of the Collector,
Dharwar, 31 -3-1956.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay, for information

hsk/30.3

for Collector of Dharwar.

No 43 of 1956.
Office of the District Govt Pleader
Dharwar dated 5-6-1956.

TO

The Remembrancer of Legal Affairs

Bombay.

Subject:- Appeal from decision in Final Decree suit Long Cause Suit No. 360 of 1949 of Hubli Court.

Reference:- Your No. 10891/E 14/5/56

An appeal has been filed in the District Court on 4-6-1956 being the last date for filing the appeal from the order of the Civil Judge (Sr Dn) Hubli in the above suit awarding to the Plaintiff - applicant against Government a sum of Rs. 1500/-. as mesne profits

The Learned Sub-Government Pleader of Hubli who conducted on behalf of the Government in the Final decree proceedings and who indeed ought to have submitted his proposals regarding the advisibility of filing an appeal therefrom does not seem to have done so. In the circumstances, I have considered it desirable to submit my opinion as to whether an appeal should be prosecuted or not.

The plaintiff applicant claiming to own R.S.Number 310 measuring 8 acres and 10 gunthas and assessed at Rs. 38/- brought the present suit against the Ramakhandi State Government in Kundagol Court for possession of the suit land, mesne profits and costs. The suit was decreed and the Government appeal from the decree failed. The plaintiff has since taken possession of the property and has made the present application in the suit for ascertaining the future mesne profits.

for six years 1947-49 to 1952-53. He claimed respectively Rs. 335/-, 350/-, 580/-, 475/- Rs. 320/- . respectively. The Government put in its statement of objections to the application wherein it seems to have contended that the income of the land in question was not more than Rs. 32/- 35/- per acre and that no more than a round sum of Rs. 100/- per year should be allowed to the plaintiff in respect of mesne profits. The plaintiff examined himself in support of his claim. But his statement is surely far from satisfactory. However-the less in a case like the present the burden would lie upon the defendant Government which was in possession of the land to show what it received and to produce its accounts. So the failure of the plaintiff to produce adequate evidence in support of the claim is not fatal to his case. As a matter of fact he has produced a certified copy of the crop-register in which it appears that one Hazaresab had taken the land on lease for one year in 1949-50 for a rental of Rs. 350/- The evidence of this cannot be disregarded.

The Court has awarded mesne profits to the plff at the rate of Rs. 250/- per year. The statement of the defendant in its written statement that the suit land would fetch at the rate of Rs. 30-35/- per acre is practically an admission that the suit land would fetch amount Rs. 280/- as rent per year. More over the documents produced on behalf of the Government in the proceeding show as discussed by the Learned Civil Judge in his order that lands near about fetched a rental of Rs. 140/- to 150/- per Kurgi each year.

Much seems to have been done of the fact that the plff asked for only a total of Rs. 300/- for all the 3 years preceding the filing of the suit, thus giving a rate of Rs. 100/- only per year. This does not and

certainly mean that the plaintiff admitted that the land yielded no more than Rs. 100/- per year. There might be several explanations for it. In the Circumstances I do not think that the appeal should be prosecuted.

At present the appeal is filed on Ten annas Courtfee stamp. In case the appeal is to be prosecuted advolarum Courtfee stamps on Rs. 900/- will have to be paid.

An uncertified copy of the Judgment and the copy of memo of appeal are sent herewith for your perusal.

A very early reply is requested.

Yours faithfully.

B. a. Mahishi
Asst Govt Pleader.

Copy forwarded with compliments to Collector Dharwar with reference to his No. MRGSR-540 dated for information.

A.D.

Submitted.
The A.G.P. states that an Appeal has already been filed on 4-6-1956 and the last date for filing appeal is on a nominal Court-fee of Ten annas. The Sub. Govt Pleader does not seem to have submitted his proposals regarding the advisibility of filing appeal. A uncertified copy of Judgment and a copy of the Appeal memo are put up for orders

15/6. Sol. (RL).

Civil appeal No. of 1956.

In the Court of the District Judge Dharwar
at Dharwar.

Appellant:- State of Bombay,

Vs.

Respondants:- 1. Fakiragauda Venkanagauda
Patil alias Sullappagaudar. age 50
Agriculture of Shirur.

2. Haidarsab Wd Hazaresab Hulagur
age 56 agriculture of Kamadblli.
Taluka Kundagol.

In this the appellant above named being aggrieved by the Judgment and final decree dated 20-2-1956 and 24-3-1956 of the Learned Civil Judge (Sr.Dn) Hubli in Long cause suit Number F.D.L.C.360 of 1949 of that Court begs to appeal from the same and sets forth the following grounds of contentions in support of its appeal.

1. The Judgment and Final decree of the Lower Court are contrary to law, evidence and equities of the case.
2. The Lower Court ought to have thrown out the application as untenable in law.
3. The Lower Court has not approached the trial of the case from a correct legal stand point.
4. At any rate the Lower Court ought not to have awarded to the plaintiff more than Rs.100/- per year as mesne profits.
5. The Lower Court ought to have held that the plff's claim of Rs. 300/- as mesne profits for all the years prior to the suit settled the mesne profits as Rs.100/- per year and that it was not open to the plaintiff to resile from that admission reinforced by his conduct.
6. The Lower Court has not given its due weight

to the fact that there is absolutely no evidence on behalf of the plff except his own statement which is halting unsatisfactory and far from convincing. His claim for Rs.350/- or even Rs.250/- per year is unsustainable.

7. The Lower Court ought to have held that the widely varying amounts which the plaintiff has claimed for the different years is a clear indication that the plaintiff does not know any thing about the real yeild of the land and that he is only trying to fish in trobled waters.

8. The Lower Court was wrong in admitting into evidence the so called crop egister and in giving to it the evidentiary value that it has done. In the absence of the examination by the plaintiff of the alleged tenant.

9. The Lower Court ought to have rejected the claim of the plff for more than Rs.100/- per year in the absence of clear and unumbiguous evidence of neighbouring land owner that it fetched more.

10. The Lower Court was wrong in supposing that the documents produced on behalf of the appellant itself supports its conclusion that mesne profits are Rs.250/- per year.

11 The Lower Court ought to have rejected the plea of the plff for mesne profits for more than 3 years as not legally maintainable.

2 Correct presumptions are not drawn.

On these among other grounds that maybe urged the hearing of the appeal, the appellantprays that the order of the Lower Court be set aside and the appeal allowed with costs.

The Judgment was delivered on 20-2-1956 and the decree is signed on 24-3-1956 and the time for filing appeal expired during the summer vacation. Hence the appeal is filed to-day on the reopening day of the court.

Drafted and presented by

Assistant Govt. Pleader.

Below Ex.65 in F.D. application No.360/1949:

This application is presented by the plaintiff for ascertaining the future meshe profits from the date of suit till delivery of possession under Order 20 Rule 12 C.P.C.The plaintiff has alleged that survey No.310 measuring 8 acres, 10 gunthas of Kamadolli was of his ownership and he had filed L.C. suit No.32 of 1947 on 17-4-1947 in Kundgol Court and thereafter it was transferred to Hubli Civil Court and it was L.C. suit No.360/1949 and a decree was passed and it was ordered that the plff should recover Rs300/- as past meshe profits and future meshe profits were ordered to be determined under Order 20 Rule 12 C.P.C.The defendants preferred an appeal to the District Court at Dharwar in C.A.No.372/1951 and it was also dismissed on 12-8-1952.Thereafter,the plaintiff took out execution proceeding in L.D.No.215/1952 and took possession in March 1953.Therefore,the plaintiff is now claiming future meshe profits from 1947-48 to 1952-53 and he has claimed Rs355/-,Rs 350/-, Rs 520,Rs520 Rs475,Rs 320/- for the various years and therefore he is requesting the Court to pass a final decree against the defendant No.1A.

The defendant No. 1A by its objections to Ex.81 contends that the application is not maintainable;that the plaintiff is not entitled to recover the amounts mentioned in the application and it has not recovered the various amounts mentioned in the application;that he does not admit the claim of Rs 2350/- in respect of future meshe profits and the plaintiff has claimed exaggerated amounts and the rent would be Rs 30/- or Rs 35/- per acre and the rent would not be more and the plaintiff is not entitled to more than 1/6th of the rent underthe Tenancy Act and the meshe profits from the land would not be more than Rs 100/- per year and the plaintiff is not entitled to any interest and therefore the application should be dismissed.

3. So the only point that is required to be determined is whether the plaintiff is entitled to so much amount as future meshe profits now claimed by the plaintiff in this application.The

The plaintiff has instituted a suit against the defendants for possession and past mesne profits, future mesne profits and costs in April 1947. The suit was decreed awarding possession, Rs 300/- as past mesne profits and costs and future mesne prorits were ordered to be determined under Order 20 Rule 12 C.P.C.Against that decree, there was an appeal to the District Court at Dharwar and it was also dismissed and ultimately the plaintiff took possession of the suit land in March 1953.He has claimed Rs 335/-, Rs 350/- Rs 350/-, Rs 520/-, Rs 475/- and Rs 320/- for the respective years from 1947-48 to 1952-53.The plaintiff is examined at Ex.101 and has has stated that every the Government had leased out the lands for the amounts mentioned in the application and he used to make enquiries about the lands and the lands could have retched a rent of Rs 200/- to Rs 250/-, per Kurgi and cotton, wheat and Jawar crops grow in the land and the Government has recovered so much rent from the land and he has taken possession in 1953 and he is personally cultivating the land but he is unable to say how much grain he got in 1952-1953 and 1953-54. The plaintiff had mixed up the other crops of his other lands and the crops in this land and he has sumitted that he was not present when the land had been auctioned by the Government every year and he does not know what amounts were deposited and paid by the Government every year and Rs 100/- will be required for cost of cultivation per Kurgi and he gets an annual income of Rs 10,000/- per year and the total expense on the agricultural establishment is Rs 2500/-. This is the only statement of the plff.He has not examined any neighbours or any independent witnesses to prove that the suit land was yielding so much income. The defendant No.1A has not examined any witnesses and it has merely contended that the income of the suit land would not be more than Rs 100/- per year. The plaintiff has claimed the future mesne profits at the rate of Rs 335/- and more for the various years from 1947-48 to 1952-53. The plaintiff has produced the certified copy of the Crop Register Extract of Kamadolli for the years 1945 to 1950-51, and it shows that the entire land had been sown every year at least from 1948-49 to 1950-51.In 1949-50, one Hazaratsab had taken the suit land for a rental of Rs 350/- and that could be seen from the Crop Register Extract.This would indicate that this land though only 2 Kurgies in extent was retching a rairly good rent.The defendant No.1A has produced the Record of Rights extract of some lands at

Kamadolli and survey No. 76 measuring 7 acres, 39 gunthasand survey No.304 measuring 12 acres were together leased out for Rs 600/- in 1952-53.So Survey Nos. 86 and 304 together were 20 acres and the land had been leased out for a rental of Rs 600/- and it shows that 1 acre was yielding Rs 30/- per acre in 1952-53 He has also produced the copy of Record of Rights Extract in respect of survey Nos. 322 measuring 6 acres, 11 gunthas, 323/2 measuring 3 acres, 8 gunthas and 67/3A measuring 3 acres, 5 gunthas which together make a total or acreage or 11 acres, 24 gunthas and all these three lands had been leased out for 1952-53 for a rental of Rs 400/-. These extracts also show that 1 acre or land in Kamadolli was fetching a rent of Rs 30/- or Rs 32/-.The defendant No.1A has also contended that the land was fetching a rent of Rs 30/- or Rs 35/- per acre per year. The suit land is 8 acres, 10 gunthas and the Crop Register Extract produced bu the plaintiff shows that in 1949-50 it was leased out for a rental of Rs 350/-.On this basis the rent per acre would be Rs 44/- but the land is assessed at Rs 38-8-0 and we have to deduct this rent in Rs 350/- and the net rent therefore was Rs 310/- in 1949-50 and it works out at Rs 39/- for the rent of the land in suitmay fairly be taken at Rs 30/- per acre though the plaintiff has claimed Rs 360/- for 1948-49 and Rs 520/- for 1950-51 and Rs 475/- for 1951-52,and Rs 475/- for 1951-52.The plaintiff has not produced any evidence to show that in those particular years the defendant No. 1A had recovered so much rent.The plaintiff has got produced the the kabulayats passed by the tenant and the correspondence between the Mamlatdar and the Prant Officer with respect to those lands but those Kabulayats and the auction sales of that lands have not been produced.Therefore, I have not exhibited those documents.The plaintiff himself had claimed past mesne profits at the rate of Rs 100/- per year for three years before the suit and the learned Civil Judge who awarded the past mesne profits only awarded Rs 300/- in respect of those 3 years.Relying on that the learned pleader for the defendant No.1A has argued that plaintiff will be entitled to an income

of Rs 100/- per year from 1947-1948 to 1952-53.But that would not be correct basis for asscertaining the future mesne profits and actually we see that in 1948-49 the land had been leased out for a rental of Rs 350/-.TheRecord of Rights Extracts produced by the defendant No.1A show that the lands at Kamacolli were yielding a rent of Rs 30/- to Rs 350- per acre and under the circumstances, I am inclined to think that the suit land must have been yielding a minimum income of Rs 250/- on average per year.So on that basis I have to award the mesne profits to the plaintiff.It is argued by the defendant No.1A that the plaintiff cannot revover more than 1/6th of the rent from the defendant No.1A.But this is not a suit to revover the rent and the defendant No.1A was admittedly in wrongful possession and therefore the question of awarding only 1/6th rent will not arise.It was upto the defendant No.1A to show that they had recovered only 1/6th rent from the tenant and as the defendants were in wrongful possession, I award the mesne profits at the rates of Rs 250/- per year.The plaintiff has claimed the mesne profits for 6 years from 1947-48 to 1952-53 and therefore the plaintiff is entitled to Rs 1500/- as future mesne profits and he is entitled to recover that amount from the defendant No.1. I, therefore, pass the following order.

Order.

The plaintiff do recover Rs 1500/- and costs of this application from the defendant No.1A after paying the necessary Court-fees and a final decree to be drawn.

20th

Sd. B.A.Chaugule.

Civil Judge,Senior Division.

Copied by. Compared by. True Copy.

Typist. Sectioner.

Clerk of the Court.

Sol.(M.L.).

- Hubli Suit No.360 of 1949.

The above suit was instituted in April 1947 in the Court at Kundgol in the former Jamkhandi State. After merger of that State with the State of Bombay the suit was transferred to the Hubli Court. In that suit a decree was made awarding the plaintiff possession of the suit land from Govt. with Rs.300/- for past mesne profits for 3 years before the suit and directing an enquiry to be made regarding future mesne profits under Order 20 Rule 12(1)(c) of the Civil Procedure Code. Against that decree Govt. preferred an appeal to the District Court, but that appeal was dismissed on 12-8-1952. Govt. acquiesced in the Dist. Judge's decree in in that appeal.

2. In execution of the above decree, the plff. got possession of the suit land in March 1953. He made an application to the Hubli Court to determine the mesne profits of the suit land for the period from the time of institution of the suit till he got possession of the land i.e. for the 6 years from April 1947 to March 1953 under Order 20 Rule 12(1)(c) of the Code of Civil Procedure. He claimed Rs.2520/- for mesne profits for the said 6 years.

3. In the Written Statement filed on behalf of Govt. in reply to the plff.'s above application for determining the future mesne profits, it was stated that the suit land fetches an annual rent of Rs.30/- to Rs.35/- per acre. Suit land measures

8 acres and 10 gunthas. So according to Govt. the proper mesne profits would be about Rs.268/- per year.

4. The Civil Judge has made a final decree in the suit awarding the plff. Rs.1500/- for mesne profits for the said 6 years i.e. at Rs.250/- per year.

5. In 1949-50 the suit land was leased out by Govt. to a tenant for a rent of Rs.350/-. The extract of the Record of Rights produced by Govt. in respect of some other land showed that land at Kundgol fetched an annual rent of Rs.30 to 32 per acre. For the 3 years before the suit i.e. from 1944-45 to 1946-47 past mesne profits had been awarded in the suit at Rs.100/- per year. Hence it was argued that future mesne profits from 1947-48 to 1952-53 should also be awarded at the same rate. As pointed out above, in Govt.'s Written Statement in this proceeding, it was admitted that the suit land can fetch an annual rent of about Rs.268 per year. In view of this admission, the argument that future mesne profits should be allowed at Rs.100/- a year was not tenable. The Civil Judge has awarded future mesne profits in this case at Rs.250/- per year. His judgment is at slip A. His decision seems to be fair and reasonable.

6. The time for filing an appeal against the Civil Judge's final decree determining the future mesne profits, expired on 4-6-1956. Till that date a copy of his judgment was not received in this office. In the letter at slip E the Asst. Govt. Pleader, Dharwar says that though the case is not a fit one for appeal, he filed an appeal on a nominal stamp of as.10 on the last day of limitation, viz. 4-6-1956.

He seeks instructionsx whether he may prosecute the appeal by paying full Court-fee of Rs.900/-. As the case is not a fit one for appeal, he may be asked to drop the appeal. The Civil Judge's final decree determining the future mesne profits may be acquiesced in.

18-6-56

MAP/-
18/6.

Jt Secy. Govt
18/6

A. No-13691/E
dt- 19/6/56

REVENUE DEPARTMENT
SECRETARIAT BOMBAY
20 JUN 1956

X Secy R.D.
18/6

L.D.
21 JUN 1956
E

Immediate.

No.1423/E
Office of the
Remembrancer of Legal Affairs
Sachivalaya, Bombay, 25th June 1956

Subject: Long Cause suit No.360/49 in Hubli Court.

MEMORANDUM:

With reference to his letter No.453 dated the 5th June 1956 on the above subject, the District Government Pleader, Dharwar is informed that Government has decided to acquiesce in the Civil Judge's final decree determining the future mesne profits in the above suits. He is, therefore, requested to drop the appeal already filed by him on nominal stamp.

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Dharwar.

Copy forwarded with compliments to the Collector of Dharwar.

mvu/22.6

Klein SDWR 2/51

all